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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 SING CHO NG,

10 Plaintiff,

11 v.

12 JIM METZ, *et al.*,

13 Defendants.

CASE NO. C18-1212 RSM

ORDER REVOKING IN FORMA
PAUPERIS STATUS ON APPEAL

14 Plaintiff was granted leave to proceed in forma pauperis (“IFP”) in this matter. Dkt. #8.
15 The Court subsequently dismissed Plaintiff’s complaint. Dkt. #13. Plaintiff has appealed to the
16 United States Court of Appeals for the Ninth Circuit. Dkt. #18. The matter was referred back to
17 this Court “for the limited purpose of determining whether in forma pauperis status should
18 continue for this appeal or whether the appeal is frivolous or taken in bad faith. Dkt. #20.
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20 An indigent party who cannot afford the expense of pursuing an appeal may file a motion
21 for leave to proceed IFP. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Where, as here, the
22 party was permitted to proceed IFP in the district court, the party may proceed IFP on appeal
23 without further authorization unless the district court certifies in writing that the appeal is not
24 taken in good faith or that the party is not otherwise entitled to proceed IFP. Fed. R. App. P.
25 24(a)(3); 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court
26 certifies in writing that it is not taken in good faith.”). An appeal is taken in “good faith” where

1 it seeks review of at least one issue or claim that is found to be “non-frivolous.” *Hooker v.*
2 *American Airline*, 302 F.3d 1091, 1092 (9th Cir. 2002).

3 An issue is “frivolous” where it “lacks an arguable basis either in law or in fact.” *Neitzke*
4 *v. Williams*, 490 U.S. 319, 325 (1989). Legally frivolous claims are those “based on an
5 indisputably meritless legal theory,” such as claims against defendants who are immune from
6 suit or for infringement of a legal interest that clearly does not exist. *Id.* at 327. Factually
7 frivolous claims are those premised on “clearly baseless” factual contentions, such as claims
8 “describing fantastic or delusional scenarios.” *Id.* at 327-28.
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10 Plaintiff’s action relates to his losing housing and becoming homeless “due to a series of
11 law-violating court proceedings orchestrated by judicial officials of King County Superior Court
12 and Court of Appeals, Division One under eviction case #15-16467-8 and appeal case #74051-
13 2.” Dkt. #9 at ¶ 1a. Plaintiff has filed at least two other actions in this Court arising out of the
14 same facts. One was related to the events leading up to and surrounding his eviction by his
15 landlord and remains pending in this Court. *Ng v. Bing Kung Ass’n, et al.*, No. C17-1515RAJ
16 (W.D. Wash. 2017). The other was directly related to the state court actions that Plaintiff’s
17 complaint attacks. *See Ng v. Metz, et al.*, No. C18-690JCC (W.D. Wash. 2018). That case was
18 dismissed and is currently on appeal before the United States Court of Appeals for the Ninth
19 Circuit. *Id.* at Dkts. #16 (dismissal) and #17 (appeal docketed as *Ng, v. Bing Kung BL*
20 *Association*, Case No. 18-35746 (9th Cir. 2018)).
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22 On October 9, 2018, the Court ordered Plaintiff to show cause and explain: “(1) why this
23 Court’s jurisdiction is not precluded by the *Rooker-Feldman* doctrine, (2) why the government
24 actors are not immune from Plaintiff’s claims, and (3) why this case is otherwise within the
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1 Court’s subject matter jurisdiction.” Dkt. #11. Plaintiff did not respond to the Court’s requests
2 to demonstrate subject matter jurisdiction. Dkt. #12.

3 Plaintiff instead expanded on the allegations of his complaint making clear that he sought
4 (1) duplicitous litigation of claims asserted in his other action pending before this Court and (2)
5 to relitigate—in federal court—claims that he had unsuccessfully litigated in state court. Dkt.
6 #13. Because Plaintiff’s claims appear clearly precluded¹ and he has done nothing to establish
7 that this Court has subject matter jurisdiction over the claims, the Court finds that the appeal is
8 frivolous.
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10 The Court also finds that Plaintiff’s appeal is frivolous as it was not timely filed. *See* Fed.
11 R. App. P. 4(a)(1) (notice of appeal to be filed within 30 days). Plaintiff did seek an extension
12 of time to file notice of appeal but gave no explanation for the request. Dkt. #15. Because the
13 applicable rule—Federal Rule of Appellate Procedure 4(a)(5)(A)(ii)—requires that a “party
14 show[] excusable neglect or good cause” the Court denied the motion. Dkt. #16. Plaintiff has
15 not attempted to provide any explanation for his delay. Because Plaintiff’s appeal is clearly
16 precluded by the Federal Rules of Appellate Procedure, the Court finds that it is frivolous.²
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18 Accordingly, the Court hereby FINDS that Plaintiff’s appeal is frivolous or taken in bad
19 faith and ORDERS that Plaintiff’s in forma pauperis status is REVOKED.
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22 ¹ The *Rooker-Feldman* doctrine prevents federal district courts from exercising jurisdiction over
23 “cases brought by state-court losers complaining of injuries caused by state-court judgments
24 rendered before the district court proceedings commenced and inviting district court review and
25 rejection of those judgments. *Lance v. Dennis*, 546 U.S. 459, 464 (2006) (quoting *Exxon Mobil Corp. V. Saudi Basic Indus. Corp.*, 54 U.S. 280, 284 (2005) (quotation marks omitted); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2004).

26 ² The Court also notes that Plaintiff’s appeal in this action appears frivolous as he has already
appealed dismissal of the same claims to the Ninth Circuit Court of Appeals. *See Ng, v. Bing Kung BL Association*, No. 18-35746 (9th Cir. 2018).

1 The Clerk is directed to forward this Order to the United States Court of Appeals for the
2 Ninth Circuit, with reference to *Ng v. Metz*, 19-35031 (9th Cir. 2019).

3 The Clerk is directed to send a copy of this Order to Plaintiff at P.O. Box 14551, Seattle,
4 Washington 98114.

5 Dated this 7th day of February 2019.

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8 RICARDO S. MARTINEZ
9 CHIEF UNITED STATES DISTRICT JUDGE
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